



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

October 25, 2022

VIA ECF

Hon. Jennifer L. Rochon
United States District Judge
United States District Court
500 Pearl Street
New York, New York 10007

Re: *Jiwani v. Emmel, et al.*, No. 21 Civ. 2458 (JLR)¹

Dear Judge Rochon:

This Office represents the government in the above-referenced action, in which the plaintiff seeks an order compelling U.S. Citizenship and Immigration Services (“USCIS”) to adjudicate a Petition for Alien Entrepreneur (Form I-526). On behalf of all parties, I write respectfully to jointly request a 60-day extension of USCIS’s time to respond to the complaint, from October 27, 2022, to December 27, 2022.² In addition, I write respectfully to jointly request that the initial pretrial conference presently scheduled for November 17, 2022, be rescheduled to the week of January 9, 2023 or thereafter (with a corresponding extension of time for the preconference submission).

We respectfully request this extension because the parties are attempting to resolve this matter without further litigation and need time to determine whether this is possible, and if so, next steps. As background, the Court previously granted a stay in this matter because statutory authorization related to the EB-5 Immigrant Investor Regional Center Program, under which the plaintiff filed the petition, expired, and USCIS announced that, in general, it would not act on any pending Form I-526 petitions until further notice. *See* ECF Nos. 24, 28. On March 15, 2022, President Biden signed into law the Consolidated Appropriations Act, 2022. *See* <https://www.congress.gov/bill/117th-congress/house-bill/2471>. Division BB of this appropriations law constitutes the EB-5 Reform and Integrity Act of 2022, which contains authority for a new EB-5 Regional Center Program. Pub. L. No. 117-103, div. BB § 103. After reviewing the new legislation and considering how it affected the processing of EB-5 petitions that were pending at the time of the expiration of the prior Regional Center Program, USCIS resumed the processing of these petitions. *See* <https://www.uscis.gov/i-526>.

¹ Alissa Emmel, USCIS Investor Program Office Chief, is automatically substituted for former Chief Sarah Kendall as a defendant in this action. *See* Fed. R. Civ. P. 25(d).

² Given that a 60-day extension falls on Monday, December 26, 2022, a federal holiday, the deadline would be extended to Tuesday, December 27, 2022. *See* Fed. R. Civ. P. 6(a)(1).

On April 14, 2022, the Court granted the government's request to lift the stay in this matter and for a 46-day extension of time to respond to the complaint. *See* ECF No. 30. Although the government had intended to move to dismiss this action, the parties believe that with additional time they may be able to resolve this matter without the need for briefing or a decision from the Court. For example, the new program offers individuals like plaintiff the opportunity to file an Application to Register Permanent Residence or Adjust Status (Form I-485) while a Form I-526 is pending. Since the last extension request, plaintiff has taken steps toward filing a Form I-485. Thus, although the parties recognize that the Court stated further extensions were unlikely, *see* ECF No. 35, we nonetheless respectfully submit an extension is warranted given the significant possibility this matter can be resolved.

This is the parties' seventh request for an extension or adjournment; the Court granted the prior requests. *See* ECF Nos. 18, 20, 22, 30, 33 and 35. Plaintiff joins in these requests.

I thank the Court for its consideration of this letter.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

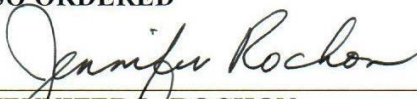
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cc: Counsel of Record (via ECF)

Request **GRANTED**. The deadline for Defendants to respond to the Complaint is hereby extended to **December 27, 2022**. The initial pretrial conference, which will be held remotely, is adjourned to **January 20, 2023 at 2 p.m.** The parties shall file the preconference submissions, *i.e.* the joint letter (*see* ECF No. 38), proposed Civil Case Management Plan and Scheduling Order (*see id.*), and joint letter with the name, phone number, and email address of counsel who expect to appear at the conference (*see* ECF No. 40), by **January 11, 2023**. The parties shall work expeditiously during this extension to resolve or otherwise move this case forward.

Dated: October 25, 2022
New York, New York

SO ORDERED


JENNIFER L. ROCHON
United States District Judge